

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS HOY AND
ELKE HOY,

Plaintiffs,

-against-

10-CV-0094
(JFB) (AKT)

THE INCORPORATED
VILLAGE OF BAYVILLE,
SPRINT SPECTRUM REALTY COMPANY, L.P.,
as Successor in Interest to SPRINT SPECTRUM, L.P.,
NEXTEL OF NEW YORK d/b/a as NEXTEL
COMMUNICATIONS, OMNIPOINT FACILITIES
NETWORK 2, LLC, and NEW YORK SMSA LIMITED
PARTNERSHIP,

**NOTICE OF
MOTION TO DISMISS**

Defendants.

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NOTICE OF MOTION TO DISMISS OF THE WIRELESS DEFENDANTS

NOW COME Defendants Sprint Spectrum Realty Company, L.P. (as successor-in-interest to Sprint Spectrum, L.P.), Nextel of New York d/b/a Nextel Communications, T-Mobile Northeast LLC (as successor-in-interest to Omnipoint Facilities Network 2, LLC) d/b/a T-Mobile, and New York SMSA Limited Partnership d/b/a Verizon Wireless (collectively, the “Wireless Defendants”) and jointly move this honorable Court to dismiss the captioned action pursuant to Federal Rule of Civil Procedure 12(b).

For the reasons stated herein and in the accompanying Memorandum Of Law In Support Of The Wireless Defendants’ Motion To Dismiss, the Plaintiffs have failed to state any claim against the Wireless Defendants upon which relief can be granted because: (1) their claims are barred by applicable limitations periods; (2) their claims are barred by the doctrine of collateral estoppel; (3) the Wireless Defendants’ conduct does not violate the restrictive covenants at issue;

(4) federal law preempts their claims; (5) the Plaintiffs lack standing to enforce one of the restrictive covenants at issue; and (6) the Section 1983 due process claim fails as a matter of law.

For the foregoing reasons, the Wireless Defendants respectfully ask the Court to grant their motion and dismiss this action in its entirety and with prejudice.

Respectfully submitted,

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